

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to establish a licensing procedure for alternative)	Case No. U-13694
gas suppliers, pursuant to MCL 460.9b.)	
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At the March 12, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

In an order issued on February 5, 2003 in this proceeding, the Commission invited interested parties to comment on a licensing procedure for alternative gas suppliers (AGSs) proposed by the Commission Staff (Staff) following passage of 2002 PA 634 (Act 634), MCL 460.9 et seq., which requires the Commission to "issue orders establishing a licensing procedure for all alternative gas suppliers participating in any natural gas customer choice program approved by the commission." MCL 460.9b(1). Comments were received from Consumers Energy Company (Consumers), Michigan Consolidated Gas Company (Mich Con), Attorney General Michael A. Cox (Attorney General), Cornerstone Energy¹, the National Energy Marketers Association (NEMA), Energy

¹ Cornerstone Energy's comments are directed at the economic feasibility of gas transportation services, which is not germane to this proceeding.

America, Kaztex Energy Management, Inc., (Kaztex), WPS Energy Services, Inc., (WPS-ESI), and Interstate Gas Supply, Inc., (IGS).

Clarification-Financial Capability

Consumers states that the Staff's proposal requires AGSs that do not have a demonstrated financial capability to provide a bond or letter of credit as part of the MCL 460.9b licensing procedure. Consumers points out that the Staff included the language "This bond or letter of credit is in addition to any tariff requirement or requirements placed on suppliers by utilities" on the informal explanation of the Staff's proposal, but omitted such language from the application. According to Consumers, for clarity the Commission should include the above-quoted language on the application. The Commission agrees. Appropriate language has been added to the application.

Michigan Offices

NEMA is concerned by the Staff's proposal to require all AGSs to maintain an office in Michigan. NEMA contends that the Michigan office requirement is unnecessary, restrictive, and costly. NEMA is concerned that some AGSs might limit their participation in the Michigan market. NEMA asserts that customers may contact their AGS through toll-free telephone numbers, e-mail addresses, and websites. According to NEMA, any jurisdictional concerns related to out-of-state AGSs can be adequately addressed by requiring the out-of-state AGS to have a registered agent in Michigan to accept service of process on its behalf.

The Commission is not persuaded by NEMA's arguments. In adopting Act 634, the Legislature specifically required participating AGSs to "maintain an office within this state." See, MCL 460.9b(2). As a creature of statute, the Commission is bound to enforce that requirement. If

an AGS has a question regarding acceptable methods for complying with this provision, it may seek advice or guidance from the Staff.

Presumption of Financial, Managerial, and Technical Capabilities

The Staff proposed that existing AGSs should have the benefit of a presumption regarding their financial, managerial, and technical capabilities. While existing AGSs would be required to file applications seeking licensure under Act 634, the Staff indicated that they should not be required to submit any information regarding their financial, managerial, and technical capabilities.

In his comments, the Attorney General argues that this recommendation appears to be inconsistent with Act 634. According to him, Act 634 requires the Commission to ensure that every AGS has the necessary financial, managerial, and technical capabilities. The Attorney General insists that absent such investigation, much of the protection intended by the Legislature will be thwarted.

The Commission finds that the Staff's position should be rejected. The gas customer choice program involves a paradigm switch from a monopolistic supplier model to a competitive marketplace for the provision of retail utility services. The Legislature and the Commission are actively encouraging and nurturing the entry of competitors into such markets. Accordingly, the Commission is not persuaded that MCL 460.9b(3) was intended to be a significant licensing prerequisite or entry barrier for existing AGSs that have already demonstrated their financial, managerial, and technical capabilities in the provision of retail natural gas service by their entry and survival in the current market. Nevertheless, the Commission agrees with the Attorney General that it would be unreasonable to presume that existing AGSs have demonstrated the sufficiency of their financial, managerial, and technical capabilities simply by their participation in

the existing gas customer choice program. Accordingly, the Staff's proposal to relieve existing AGSs from presenting proof of their financial, managerial, and technical capabilities is rejected. However, the Staff will be permitted to consider and give weight to an existing AGS's past performance under an existing gas customer choice program in this state.

Objective Licensing Criteria

The Attorney General contends that the Staff's proposal lacks objective licensing criteria. He argues that although there is a detailed application process, there is no indication regarding the criteria that the Commission will use to grant or deny licenses. According to the Attorney General, the absence of identifiable licensing criteria will be particularly troublesome to anyone attempting to challenge an adverse license determination by the Commission.

The Commission finds that the Attorney General's contentions are not well taken. Exhibit A describes the information needed for approval of an AGS application. Moreover, the Commission intends to follow the same procedure currently applicable to alternative electric supplier (AES) licenses. As noted on Exhibit A, the Commission will act on an ex parte basis to approve AGS license applications after the Staff has had an opportunity to completely review them. If the Commission is not satisfied that an application should be approved on an ex parte basis, the Commission will notify the applicant of the Commission's intent to conduct a contested case proceeding. Because a final order issued in a contested case proceeding must set forth the Commission's fact findings and legal conclusions, a party to such a proceeding will have an understanding of the criteria that the Commission used to make its determination to grant or deny the license.

Clarification-No applicability to transportation gas suppliers

Kaztex supports the Staff's proposal, which applies to AGSs participating in a natural gas customer choice program but not to transportation gas suppliers. Kaztex suggests that if the Commission publishes a list of licensed AGSs participating in natural gas customer choice programs, a disclaimer should be placed on the list indicating that transportation gas suppliers do not need to be licensed in order to deliver gas in Michigan. According to Kaztex, such a disclaimer could avoid confusion and eliminate anxiety for transportation gas customers.

WPS-ESI also expresses concern that some customers of its transportation gas service could be confused by the subtle distinction between transportation gas suppliers and AGSs participating in natural gas customer choice programs. Therefore, WPS-ESI suggests that the Commission amend the Staff's proposal to include definitions of the terms "transportation gas programs" and "utility retail choice programs." WPS-ESI also contends that the Commission should add language to inform applicants that participants in transportation gas programs are not included in the proposed AGS licensing program.

The Commission finds that the suggestions made by Kaztex and WPS-ESI should be adopted. Accordingly, appropriate language will be incorporated to eliminate their concerns.

Termination of Service

Mich Con states that under Act 634, the delivery of natural gas is the sole province of the natural gas utility offering the customer choice program. As such, Mich Con contends that an AGS would never be directly involved in the physical act of terminating a customer's gas service. Therefore, Mich Con questions the necessity and appropriateness of including language regarding the termination of a customer's gas service as a term or condition in the licensing of an AGS.

The Commission agrees. Accordingly, the Commission has modified the language to take into account Mich Con's concern.

Staff Review Timeframe

NEMA points out that in its June 19, 2000 order in Case No. U-11915, the Commission indicated that the target timeframe for the Staff to process a licensing application for an AES should be 30 days under normal circumstances. NEMA recommends that the Commission adopt the same target timeframe for the processing of applications filed by AGSs.

The Commission agrees that a 30-day review is appropriate under normal circumstances.

Clarification-Supporting Documentation

NEMA points out that page 2 of Staff Exhibit A that was appended to the February 5 order indicated that information pertaining to an AGS's creditworthiness must be included as part of the AGS's initial application, which seems to contradict a statement appearing on page 1 of Staff Exhibit B, which indicated that such information is not to be included with an AGS's initial application. Also, NEMA expresses concern that the confidential and proprietary information of an AGS should not be part of the initial application, which will be part of the Commission's public records.

The Commission agrees that confidential and proprietary information of an AGS should not be part of the initial application. Accordingly, the instructions and application, which are attached to this order as Exhibit A, have been revised to clarify that information pertaining to a new AGS's creditworthiness must be disclosed as part of the Staff's investigation, not as part of the AGS's initial application.

Bond Amount

NEMA contends that the Commission needs to address the process to be followed by the Staff to determine the bond amount, which should be set at a reasonable amount. According to NEMA, confusion exists because although the Staff represented that the AGS process should mirror the AES process, the Staff's description of the process followed for an AES appears to be inconsistent with the current wording of the AES license application. NEMA seeks clarification of the AES process and parity for AGSs.

The Commission finds that NEMA's proposal should be rejected. It is the Commission's understanding that the process followed to set bond amounts for AESs has evolved over the years, and that the Staff intends to adhere to a similar approach for AGSs.

Demonstration of Financial Capability

NEMA asserts that for AESs, the Staff only requires proof of a bond or line of credit in the amount of \$100,000 if the AES does not have a financial rating of BBB or better from a major financial rating service. According to NEMA, the Commission should narrowly define "demonstrated financial need" and clarify whether an AGS may automatically meet this requirement by presenting proof of a financial rating of BBB or better from a major financial rating service.

The Commission is persuaded that some flexibility is needed to ensure that the requirement that an AGS demonstrate its financial capability does not become an inflexible entry barrier. Therefore, the Commission finds that NEMA's position should be rejected.

Business Ethics

NEMA, IGS, and Energy America contend that the Staff's concern over violations of "business ethics" is vague and subject to various interpretations. According to them, the Commission should provide a more definitive explanation of that term.

The Commission declines the invitation to provide a more specific listing of offenses that must be disclosed. The Commission doubts that it could formulate a description of every misdeed that could affect a licensing determination. In any event, the Commission does not desire to debate whether the absence of an item from such a listing excuses an AGS from its disclosure. However, the Commission is persuaded that this provision should be clarified as applicable to determinations of both courts and administrative agencies.

Competence

NEMA and Energy America maintain that the Commission needs to better explain the meaning of the requirement that an AGS submit an affidavit attesting to the "competence" of its employees who are responsible for marketing natural gas. According to them, the Commission should set forth specific criteria that will be considered in determining the competence of employees.

The Commission finds that NEMA and Energy America have misunderstood this requirement. The Commission does not intend to judge the qualifications of an AGS's employees on an individual or collective basis. Rather, the Commission is seeking some assurance from the AGS that its employees are adequately prepared to conduct the AGS's business activities within the requirements of the law and acceptable business practices. An AGS may meet this obligation in myriad ways, such as by hiring or contracting with only experienced workers or through a training program.

Slamming and Cramming

NEMA contends that the discussion of slamming and cramming that appears on the AGS application needs to indicate that no fines will be imposed for unintentional and bona fide errors that result in a slamming or cramming dispute.

The Commission notes NEMA's concern, but observes that a more complete consideration of the content of anti-slamming and anti-cramming provisions, which the Commission is authorized to adopt for AGSs and natural gas utilities pursuant to MCL 460.9(3), will be addressed in a separate proceeding to be initiated in the near future.

Confidentiality of Customer Information

NEMA and Energy America argue that the requirement that all information obtained by an AGS from a customer must be held in strict confidence is impractical. According to them, certain customer information needs to be shared with third-party providers and credit agencies. They insist that the interests of customers in the privacy of their confidential information will be met by a requirement that allows for the disclosure of such information accompanied by a notice that any further disclosure of confidential customer information to additional third persons for non-marketing purposes is prohibited.

The Commission finds that the clarification sought by NEMA and Energy America is reasonable and should be granted.

Confidentiality of Books and Records

NEMA, IGS, and Energy America contend that the mandate that the books and records of AGSs be provided to the Staff should be amended to allow the AGSs to protect confidential information and trade secrets from public disclosure. Additionally, they assert that such

requirements add to an AGS's paperwork burdens and drive up the cost of doing business in this state. According to them, until the advent of a fully unbundled marketplace, the Staff should be able to obtain all switching and throughput statistics from the local distribution companies. Finally, they seek (1) an assurance that the reporting provisions will be applied uniformly to all AGSs and (2) a better identification of the type of information to be reviewed.

The Commission assures NEMA, IGS, and Energy America that its ability to examine the books and records of an AGS will not involve routine inspections or reviews. Rather, the Commission intends such inspections and reviews to be relatively rare, associated with exceptional circumstances, and conducted in a manner that will respect the confidential nature of the information.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACR, R 460.17101 et seq.
- b. The Staff's proposed gas supplier licensing procedure should be adopted as modified.

THEREFORE, IT IS ORDERED that the Commission Staff's proposed gas supplier licensing procedure, attached as Exhibit A, is adopted as modified.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of March 12, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

Implementing 2002 PA 634
Alternative Gas Supplier Licensing Procedures
Michigan Public Service Commission

Public Act 634 of 2002 (Act 634), MCL 460.9 et seq., which became effective on December 23, 2002, requires an Alternative Gas Supplier (AGS) selling natural gas at unregulated retail rates in Michigan to obtain a license from the Michigan Public Service Commission (Commission). The law requires the Commission to establish a licensing procedure.

Section 9b of Act 634 outlines the licensing of AGSs. Generally, the Commission must issue orders establishing a procedure. All AGSs shall be licensed. The Commission shall require AGSs to collect and remit all applicable taxes to the state and local units of government unless a natural gas utility is doing so on behalf of the AGS. Finally, there is a broad mandate that the Commission shall assure that AGSs have “the necessary financial, managerial, and technical capabilities and require the supplier to maintain records that the commission considers necessary.” MCL 460.9b(3).

Establishing the licensing process.

The Commission must issue an order to establish the licensing procedure.

Who must be licensed?

All AGSs delivering to retail customers under a utility retail choice program must be licensed. This includes existing and new AGSs.

Do suppliers of transportation gas need to be licensed?

No, transportation gas customers are outside the retail choice program.

The application process.

Both existing and new AGSs will be obligated to submit fully completed applications pursuant to the Commission-established process. The Commission Staff (Staff) will examine information related to financial, managerial, or technical capabilities of AGSs. In so doing, the Staff will consider and give weight to an existing AGS’s past performance under an existing gas customer choice program in this state.

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The licensing process will be similar to the Alternative Electric Supplier (AES) licensing process.

1. An AGS submits its application for review by the Staff. Information pertaining to a new AGS's creditworthiness is to be disclosed as part of the Staff's investigation, not as part of the AGS's initial application.
2. The Staff reviews the application and the AGS's Terms and Conditions Agreement submission, consults with any needed experts and the applicant, and makes a recommendation to the Commission for approval or non-approval of the license. The Staff's review process time will vary depending on initial application contents, additional information requirements, and necessary meetings with the applicant to validate proprietary documentation. Under normal conditions, the Staff's review should be finished within 30 days if the application is properly filled out at the time it is filed.
3. The Commission will issue an ex parte order approving the issuance of a license if it is satisfied that the application meets the licensing criteria. Otherwise, the Commission will schedule the matter for a contested case proceeding in the event that the applicant did not sufficiently demonstrate capability through the Staff's review.
4. An applicant or other party has the right to appeal the Commission's order.

The application format.

The format of the application generally follows the established process for the licensing of AESs. The AES licensing process falls under 2000 PA 141 (Act 141), which includes a bond requirement. The Staff generally meets with an AES to review confidential information and requires a bond or letter of credit in the amount of \$100,000 for any AES that does not have a BBB or better rating from a major financial rating service.

Act 634 does not explicitly require a bond or letter of credit for an AGS. However, Act 634 does require the Commission to assure that all AGSs have the necessary financial capability. So, while not explicitly required, the Staff will request a bond or letter of credit from applicants that have not demonstrated financial capability. The amount of the bond or letter of credit will be similar for all AGSs. The Commission finds that the \$100,000 presently required for AESs will be sufficient for AGSs. Such bond or letter of credit will be in addition to any tariff requirements placed on AGSs.

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Public Act 634 of 2002 (Act 634), which became effective on December 23, 2002, requires an Alternative Gas Supplier (AGS) selling natural gas at unregulated retail rates in Michigan to obtain a license from the Michigan Public Service Commission (Commission). The law requires the Commission to establish a procedure for licensing AGSs. However, transportation gas customers are outside the retail choice program and suppliers of transportation gas do not need to be licensed under Act 634.

The completion and submission of Part I of this Application is the first step in the Commission's procedure for obtaining an AGS license. After the Commission Staff's (Staff) review of an applicant's initial submission of the Part I information is completed, the AGS and the Staff will jointly determine an appropriate time and place for the Staff to review the confidential information required by Part II of the application.

Failure to provide accurate information on this form, to furnish any required supporting information including required affidavits, or to comply with the Terms and Conditions of the application and licensing process may result in denial or revocation of a license.

PART I: Information required in initial application. This information will remain on record at the Commission.

1. Applicant's business name and type of legal entity (corporate, type of partnership, etc).
2. Contact agent, telephone number, fax, and email address for application process and staff contact.
3. Provide business name, address, and telephone number.
4. Toll-free telephone number, email address, and website for 24-hour contact for customers.
5. If principal place of business is outside Michigan, provide Michigan office address.
6. Specify type of provider (utility, utility affiliate, marketer).
7. Business affiliation (utility affiliation, other).
8. Federal Energy Regulatory Commission (FERC) authorization type(s) and number(s), if required.
9. Has the applicant or any agent of the applicant within the past three years committed any violations of law or business ethics in connection with provision of energy or energy-related products or services anywhere that resulted in a conviction or acceptance of a penalty for such behavior by a court or an administrative agency?
If the answer is yes, explain the violations in an attachment to this application.
Subsequent violations must be disclosed within 30 days.
10. Experience as a supplier of retail energy, including natural gas or electricity. This should outline any failures to serve customers by the applicant or any predecessor or affiliate entity.
11. Outline of staffing and procedure for responding to customer inquiries and customer complaints.

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Alternative Gas Supplier Licensing Procedures
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12. A separate legal affidavit, signed by a corporate officer with proper authority, which shall attest to the competence of the company's employees to market natural gas as an AGS.

PART II: Additional information for the Staff's review. This should not be included with application and will not be included in record files at the Commission.

- 13. Two years of audited financial documents of applicant or controlling company.
- 14. Line of credit or bond in the amount of \$100,000 will be required for applicants without demonstrated financial capability. Note: Such bond or letter of credit will be in addition to any tariff requirements placed on AGSs.
- 15. Resumes or biographical summaries of individuals chiefly responsible for operations.
- 16. Overview of business plan including risk management strategy or policy.

PART III - COMPLIANCE COMMITMENT

By signing this application and providing the affidavit letter required in item 11 of this application, the applicant and its representatives (1) certify that the information provided herein is accurate and complete and (2) agree to abide by the provisions of this agreement including the Terms and Conditions for a Michigan alternative natural gas supplier.

Signature: _____

Date: _____

Name:

Title:

Upon approval of this application through an order issued by the Michigan Public Service Commission, the applicant will be licensed as an alternative gas supplier under Public Act 634 of 2002, MCL 460.9 et seq. Submit the completed and signed forms along with the signed affidavits and any necessary supporting documentation to:

Alternative Gas Supplier Program
Competitive Energy Division
Michigan Public Service Commission
P.O. Box 30221
Lansing, Michigan 48909

APPLICATION, SUBMISSION, AND LICENSE PROCESS:

**Implementing 2002 PA 634
Alternative Gas Supplier Licensing Procedures**

Michigan Public Service Commission

The application may be downloaded in PDF or Word format. Responses to Part I may be attached or the Part I items may be reformatted by expanding the application and inserting responses. The compliance commitment must be signed and dated as indicated.

The Staff will contact you via email or phone to acknowledge receipt of application. The Staff also will notify you regarding any clarifications or needed additional materials. Once the Staff determines that the initial application materials are complete, the Staff will meet with principals of applicant to cover and discuss Application Part II information. The Part II information is regarded as sensitive or confidential and will not be archived at the Commission but is relevant to the viability of the applicant to reliably provide natural gas to Michigan retail customers.

Upon completion of the application process, the Staff will make a recommendation to the Commission regarding the license. Granting of the license is by Commission order.

Commission Staff contacts:

Jack Mason	517 241-6172 (primary contact)
Mary Jo Kunkle	517 241-3322 (alternate contact)

Attachment A: Terms and Conditions

- 1) Supplier contact information.** An AGS shall notify the Staff of any change in the AGS's name, corporate structure, Michigan address, telephone number, and contact person, or agent.
- 2) Michigan office.** An AGS shall maintain a Michigan office. An AGS representative, toll-free telephone number, e-mail address, and website must be made available at all times to enable customers to contact or make inquiry with the AGS.
- 3) FERC authorization.** An AGS shall obtain any authorizations required by the FERC, including any authorization required by the FERC to become a natural gas retail marketer. An AGS shall notify the Staff within 30 days of any FERC determination regarding the AGS's provision of natural gas to retail customers.
- 4) Business practices and ethics disclosure.** An AGS shall follow all state and federal laws, as well as Commission policies and practices that may be established. Violations of law or business ethics by an AGS or an AGS's agent in connection with provision of energy or energy-related products or services anywhere must be disclosed to the Staff within 30 days of any conviction or penalty determined or imposed by a court or an administrative agency.
- 5) Product/Service disclosures.** An AGS shall conform to all customer disclosure requirements set by the Commission under authority of Act 634.
- 6) Product/Service marketing and contract practices.** An AGS shall ensure fair and truthful representation of all products or services provided under a gas customer choice program in Michigan.
- 7) Customer enrollment and services.** Enrollment of customers in the Michigan retail access program shall strictly follow the procedures authorized by the Commission. Slamming (unauthorized switching) or cramming (unauthorized adding of additional products or services

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not requested by the customer) as outlined in subsections (2) and (4) of Act 634 constitute serious offenses in the enrollment process. An AGS shall not include or add products or services without authorization as outlined in Act 634 and shall conform to all state and federal laws and regulations regarding the retail sale of products and services.

8) Termination of service to customer. The delivery of natural gas is the sole province of the natural gas utility offering the gas customer choice program. Termination of service to a gas customer choice customer will be handled by the natural gas utility in conformity with all rules and procedures authorized by the Commission.

9) Utility tariffs and rules of service. AGSs shall comply with utility tariffs and rules of service established and authorized by the Commission or the FERC that are applicable to the AGS or its retail customers.

10) Customer confidentiality. Information obtained from a customer or a potential customer by an AGS or an agent of an AGS is to be held in strict confidence and shall not be disclosed unless disclosure of the information is necessary to service the customer or to verify the potential customer's credit information. In the event that a customer's or a potential customer's confidential information is disclosed to a third party for any purpose, the AGS shall ensure that the party to whom the information is disclosed is informed of the duty to maintain the confidentiality of such information in the future. Any other use of such confidential information is prohibited absent the express approval of the customer or potential customer. Solicitation for such approval shall not be commingled with other offers, contracts, or approvals.

11) Customer data requests. A customer shall have the right to obtain its own billing and natural gas consumption data that is in the possession of the AGS.

12) Associated broker, aggregator, or marketer. An AGS that relies on the services of brokers, aggregators, or marketers shall pledge a best faith effort to hold them in compliance with provisions of this agreement. AGSs shall supply the Staff with the address, telephone number, name of a contact, and business affiliation of any brokers, aggregators, or marketers used by the AGS.

13) State taxes, fees and revenue collection. An AGS shall collect and remit all applicable state taxes, fees, and charges levied on energy suppliers as a class of business providers, including those fees and charges established by the Commission to implement and enforce this program, unless the natural gas utility is doing so on behalf of the AGS.

14) Reporting. AGSs shall provide statistical data regarding their retail sales and wholesale transactions to the Commission and its Staff upon request. The books and records of an AGS shall be made available by the AGS so that the Commission and its Staff may verify the accuracy of the statistical data.